72-847

LIBRARY
SUPREME COURT, U. S.

Supreme Court, U. S.
FILED
FEB 27 1973
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

No. 72-847

MEMORIAL HOSPITAL, HENRY EVARO, et al.,
Appellants,

vs.

MARICOPA COUNTY and HENRY H. HAWS,
B. W. BURNS and J. ROBERT STARK,
Supervisors,
Appellees.

MOTION TO AFFIRM

William Carter
Maricopa County Manager
Office
111 South Third Avenue
Phoenix, Arizona 85003

Counsel for Appellees

IN THE

SUPREME COURT OF THE UNITED STATES

No. _____

MEMORIAL HOSPITAL, HENRY EVARO, et al.,

Appellants,

vs.

MARICOPA COUNTY and HENRY H. HAWS,
B. W. BURNS and J. ROBERT STARK,
Supervisors,

Appellees.

MOTION TO AFFIRM

SUBJECT INDEX

	Page
Introduction.....	1
History and Statutes.....	2
Issues Presented.....	2
Jurisdiction.....	4

IN THE

SUPREME COURT OF THE UNITED STATES

No. _____

MEMORIAL HOSPITAL, HENRY EVARO, et al.,

Appellants,

vs.

MARICOPA COUNTY and HENRY H. HAWS,
B. W. BURNS and J. ROBERT STARK,
Supervisors,

Appellees.

MOTION TO AFFIRM

I. INTRODUCTION

Maricopa County, Arizona, and its supervisors Henry H. Haws, J. Robert Stark, Eldon R. Rudd, Robert K. Corbin, and Joe Eddie Lopez, Appellees,* join with Appellants in urging the Supreme Court of the United States to take jurisdiction in this case because of the important federal question presented, but respectfully request that this Court affirm the decision of the Supreme Court of the State of Arizona.

---

*The name of the Appellee B. W. Burns as nominal defendant has been deleted and the names Eldon Rudd, Robert K. Corbin and Joe Eddie Lopez inserted pursuant to Rule 48 Rules of Supreme Court because Burns is no longer a member of the Board of Supervisors of Maricopa County, Arizona. Rudd, Lopez and Corbin, together with Supervisors Henry H. Haws and Robert Stark now constitute the Maricopa County Board of Supervisors, nominal defendants in the action below.

II. HISTORY AND STATUTES INVOLVED

Appellees accept Appellants' summarization of the lower court opinions and the statutes involved.

III. ISSUES PRESENTED

The sole issue in this case is whether the State of Arizona may require that all persons receiving non-emergency medical care at the expense of a territorial subdivision of the state must have resided within that subdivision for one year or more.

In order to decide that issue, the Court must consider one or more of the three following underlying questions:

1. Does a one year durational residence requirement for receiving non-emergency medical care at public expense constitute an impediment to the right of interstate travel as set forth by this Court in Shapiro v. Thompson, 394 U.S. 618, 89 S.Ct. 1322, 22 L.Ed.2d 600 (1969)?

If the answer to the preceding question is "No", as Appellees assert, the action of the Supreme Court of the State of Arizona must be affirmed, for the sole basis of this appeal is that this durational residence requirement constitutes an unlawful impediment to the right to engage in interstate travel. The position of the Appellees is that a restriction on the right to receive non-emergency medical care does not constitute such an impediment because it in no way interferes with the right of anyone to travel anywhere at anytime.

If this Court believes that such a residence requirement does constitute an impediment to the right of interstate travel, it must determine a second underlying issue.

2. Does the financial savings resulting from the Arizona durational residence statute constitute a compelling state interest? Appellees furnished to the courts below affidavits that the estimated cost to Appellees of abolishing the durational residence requirement for

non-emergency hospital care would be $2,500,000.00 for the first year. This sum constituted 13% of the amount budgeted for hospital care of the indigent during the fiscal year that the case was heard. To raise such an amount Appellees would have to increase the ad valorem property tax rate by 8.5% or reduce expenditures in other areas of public need.

Appellees recognize that this Court held in Shapiro v. Thompson, supra, that "fiscal expediency" did not constitute a compelling state interest. However, Appellees respectfully submit that an increase in public expenses of the magnitude cited above transcends mere fiscal expediency and constitutes a compelling state interest. These fiscal difficulties would seriously impede adequate county health services.

If the Court concludes that the increase in expenses cited above does not constitute a compelling state interest, it must then consider a final underlying issue.

3. The Arizona durational residency requirement in question requires that the person claiming medical care must have resided within the territorial subdivision of the State for one year. It excludes as ineligible persons who have resided in the State for more than one year, but have not resided in the territorial subdivision of the State for one complete year. Therefore, it makes no distinction between people who have moved from points within the State and people who have moved from points without the State and it applies in like manner to new and old residents of the State who have not completed one year's residence within a particular subdivision. Does this fact cure the alleged constitutional defect in the resident state by treating old and new residents of the state equally and requiring that both have completed a one year period of residence in the territorial subdivision?

4. One issue is not involved in this case, the right of an indigent to emergency health care. Emergency health care is provided to all citizens of the State of

Arizona at present, and this obligation is not contested.

IV. REASONS FOR ASSUMING JURISDICTION

The decision of the Supreme Court of the State of Arizona conflicts directly with the decision of a three-judge panel of the United States District Court in Valenciano v. Bateman, 322 F. Supp. 600, (Dist. Ct. Az. 1971). The only form in which this conflict can be resolved is the Supreme Court of the United States. Appellees therefore join with Appellants in urging this Court to accept jurisdiction of the appeal and to decide the case on the substantive issues presented.

Footnote No. 21 in Shapiro v. Thompson, supra, indicates that subsequent cases involving residency issues will be decided on a case-by-case basis:

> We imply no view of the validity of waiting period or residence requirement determining eligibility to vote, eligibility for tuition-free education, to obtain a license to practice a profession, to hunt or fish, and so forth. Such requirements may promote compelling state interests on the one hand, or on the other, may not be penalties upon the exercise of the constitutional right of interstate travel. (394 U.S. at 638)

Dunn v. Blumstein, ____U.S. ____, 31 L.Ed.2d 274, 92 S.Ct. ____ (1972), with seven members of the Court participating, decided that a durational residency requirement for voting in Tennessee was unconstitutional. On the other hand, Kirk v. Board of Regents, 273 Cal.App.2d 430, 78 Cal.R. 260 (1969) and Starns v. Malkerson, 326 F.Supp. 324, (Minn. 1970), affirmed 401 U.S. 985, 91 S.Ct. 1231, 28 L.Ed.2d 527 (1971) have upheld durational residency requirements for reduced tuition at state universities. In view of the cases which have in one way or another departed from

Shapiro, and Shapiro's suggestion of a case-by-case approach to the residency requirement, the residency requirement for non-emergency health care deserves consideration by this Court.

The State of Arizona has an unusual problem because the Arizona Supreme Court decision below conflicts with the district Court decision in Valenciano, supra. As a result the Supervisors of Pinal County are enjoined from obeying the Arizona statute in question, while the Supervisors of Maricopa County must obey it at the risk of personal liability. Finally, Justice Warren's comments in Shapiro apply to this case.

> Residence requirements do not create a flat prohibition (on travel), for potential welfare recipients may move from state to state and establish residence wherever they please. Nor is any claim made by appellees that residence requirements compel them to choose between the right to travel and another constitutional right. (394 U.S. at 648)

There is a compelling state interest in maintaining the residence requirement, an interest which is both fiscal and administrative. The reason is not only the $2,500,000.00 additional health cost to the residents of Maricopa County, who primarily support their hospital through their own taxes, but also the maintenance of existing adequate health services. Arizona has population characteristics different from those of the states involved in Shapiro. It has an extremely fluid population and its warm, dry climate attracts people throughout North America with asthmatic, respiratory and other health problems. The residence requirement is an absolute necessity to permit intelligent planning for the continuation of adequate health services in Maricopa County. Absent such a requirement, the short-term effect would be that Arizona indigent citizens residing in counties other than Maricopa would flock to Maricopa County for a limited period of free health treatment,

while the long-term effect would be that indigent persons throughout North America would be enabled to receive free medical care at the expense of Maricopa County Hospital, regardless of their place of residence, simply by stating that they have recently established residency in Maricopa County. In either the long or short-term result, Maricopa County could become flooded with people demanding free treatment for various non-emergency ailments.

Intrastate travel differs from interstate. Numerous cases, including Shapiro, imply that the commerce clause is the fountainhead of the constitutional right to travel. As Shapiro itself recognizes, this right stems from "the nature of our federal union." The right to travel basically thus reflects the right of the citizens of the several states to travel beyond state borders to the national capitol in Washington, D.C. to redress their grievances. Accordingly, the constitutional right to travel fundamentally views interstate travel within the federal union, rather than intrastate travel within the counties of one state. This conclusion is buttressed by the existing and constitutional residency requirements on county officials, such as district attorneys, mayors, sheriffs, aldermen, and supervisors, to name but a few of the officials subject to duration residency requirements in political subdivisions of a state. Furthermore, the fact that the monies involved in the instant case are not federal but rather county-raised suggests that the "federal" right to travel is not so directly involved as it was in Shapiro, where the travel was motivated by a desire to reap the benefits of federally-funded and federally-administered programs supported by the nation at large.

This case differs from Shapiro, in all the following respects: It deals with county monies, not federal funds; the monies are raised by local taxpayers, rather than by the nation at large; it primarily concerns limited intrastate rather than interstate travel; it involves health care rather than welfare; the possibility for residency fraud and deception in free

hospitalization is much greater than in the welfare situation encountered in Shapiro; and, finally, the instant case concerns a non-emergency medical care dissimilar to the kind of welfare payments absolutely necessary to sustain daily sustenance for the plaintiffs in Shapiro.

For the above reasons, this Court is respectfully urged to affirm the decision of the Arizona Supreme Court below.

Respectfully submitted,

WILLIAM CARTER
Counsel for Appellees

February 1973